# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 21981 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SHILUBHAI UKABHAI DEVIPUJAK - Petitioner(s)**

**Versus**

**THE STATE OF GUJRAT & 2 - Respondent(s)**

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**Appearance :**

MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 16/12/2005**

**ORAL JUDGMENT**

1. Shilubhai Ukabhai Devipujak-petitioner-detenu has filed this habeas corpus petition under

Article 226 and 227 of the Constitution of India challenging order of detention dated 22.09.2005 passed by Police Commissioner, Rajkot city under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA Act') which is illegal, null, void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 20.10.2005 and this Court issued RULE on 28.10.2005 which was made returnable after four weeks and that is why this matter has come up before this Court for hearing and final disposal.

2. Heard, Ms. Krishna U. Mishra, learned Advocate for the petitioner and Mr. Pujari, learned A.G.P. in this behalf. Ms. Mishra, learned Advocate for the petitioner has invited my attention to the order of detention and committal order dated 22.09.2005 by which petitioner-detenu was arrested and sent to Sabarmati Central Jail, Ahmedabad.

3. Learned Advocate for the petitioner has

further invited my attention to the grounds supplied in the order of detention. As the grounds of detention five criminal cases have been shown as registered against the petitioner-detenu. First offence being registered as C.R. No.108/2005 at Pradumnnagar police station dated 08.03.2005 punishable under Section 447 and 379 of the Indian Penal Code. In that case it was alleged that the petitioner-detenu committed theft of iron chain weighing about 35 kilogram valued at Rs.300/- and the same was recovered by the authority. Second offence being registered as C.R. No.337/2005 at 'B' Division police station dated 10.08.2005 punishable under Section 447, 379 and 114 of the Indian Penal Code. In that case it was alleged that the petitioner-detenu committed theft of 24 pieces of iron sheet valued at Rs.2400/- and copper wire weighing about 8 kilogram valued at Rs.1120/-and the same was recovered by the authority. Third offence being registered as C.R. No.344/2005 at 'B' Divison police station dated 11.08.2005 punishable under Section 447, 379 and 114 of the Indian Penal Code. In that

case it was alleged that the petitioner-detenu committed theft of iron waste weighing about 300 kilogram valued at Rs.3,000/- and the same was recovered by the authority along with one 'Chakdo' Rickshaw valued at Rs.45,000/-. Fourth offence being registered as C.R. No.345/2005 at 'B' Divison police station dated 11.08.2005 punishable under Section 447, 379 and 114 of the Indian Penal Code. In that case it was alleged that the petitioner-detenu committed theft of 'Pital' utensil waste weighing about 35 kilogram valued at Rs.4,200/- and the same was recovered by the authority. Fifth offence being registered as C.R. No.346/2005 at 'B' Divison police station dated 12.08.2005 punishable under Section 447, 379 and 114 of the Indian Penal Code. In that case it was alleged that the petitioner-detenu committed theft of iron waste weighing about 100 kilogram valued at Rs.1,000/- and the same was recovered by the authority.

4. Learned Advocate for the petitioner further stated that in the order of detention it was stated

that the petitioner-detenu is carrying on anti-social activities and on the basis of five offences registered against the petitioner-detenu he was termed as 'Dangerous Person' within the meaning of Section 2(c) of the PASA Act. It was also stated that as said anti-social activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed.

5. Learned Advocate for the petitioner has further stated that on the basis of five criminal cases registered against the petitioner-detenu, he cannot be termed as 'Dangerous Person'. In support of this learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491. Learned Advocate for the petitioner has also placed reliance on Division Bench judgment of this Court in L.P.A. No.1139 of 1999 (Coram: Acting C.J., C.K. Thakkar & K.M. Mehta, J.) decided on 04.10.1999

in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000 (1) GLH 393. He has also placed reliance on the judgment of this Court (Coram: H.K. Rathod, J.)in the case of Naresh alias Lalo Babubhai Vs. State of Gujarat and Others reported in 2002(1) GLH 528.

6. Heard, Mr. Pujari, learned A.G.P. for respondent-detaining authority and he has filed affidavit of one Mr. K. Nityanandam, Police Commissioner, Rajkot City and has tried to defend the order of detention as well as grounds stated therein.

7. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is five criminal cases registered against the detenu and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'.

8. I have also heard learned Counsel for both

the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra) and also Division Bench judgment of this Court in the case of Ashokbhai Jivraj(Supra) and another judgment of this Court in the case of Naresh alias Lalo Babubhai(Supra). In view of the facts and circumstances of the present case and also ratio laid down in the cases mentioned above, the order of detention cannot be sustained and

9. In the result, this petition is allowed and order of detention dated 22.09.2005 passed by Police Commissioner, Rajkot city is hereby quashed and set aside. Shilubhai Ukabhai Devipujak-detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case

by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(K.M.MEHTA,J.)

Umesh/-